

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

JOE M. SENG
Clinton County, Iowa

ADMINISTRATIVE CONSENT
ORDER

NO. 2014-AQ-02

TO: Joe M. Seng
4804 NW Blvd
Davenport, IA 52806

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Joe M. Seng for the purpose of resolving the air quality violations which occurred during the renovation of a building in Lost Nation, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Kurt Levetzow
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

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III. STATEMENT OF FACTS

Mr. Seng neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. In April 2012, Joe Seng purchased the former Lost Nation Middle School located at 100 Winter Street in Lost Nation, Iowa. Mr. Seng planned to renovate the building and convert the school into residential units.

2. On May 16, 2013, DNR Field Office 6 received a complaint regarding the renovation of the former school. The complainant was concerned with asbestos issues involved in the renovation.

3. On May 17, 2013, Kurt Levetzow, DNR Field Office 6 environmental specialist senior, and Brian Lee, DNR Field Office 6 environmental specialist, investigated the complaint. When Mr. Levetzow and Mr. Lee arrived at the former school building they met with Dave Reeves, a carpenter Mr. Seng hired to conduct general construction work on the building. At the time of the inspection, Mr. Reeves was mudding the new drywall. He stated that he had been working three to four weeks on the project. He gave Mr. Levetzow and Mr. Lee a tour of the building and showed them the work that had been completed. Mr. Levetzow and Mr. Lee noted several rooms and hallways had materials that had been removed, including chalk boards, lockers, floor tiles and floor base cove. The total area of the removal project was in excess of 160 square feet. During the inspection Mr. Levetzow also spoke by telephone to Lonnie Benze, another contractor hired by Mr. Seng for the project. Mr. Levetzow asked Mr. Benze if an asbestos inspection had been completed on the building and Mr. Benze explained that the school had one done, likely referring to an Asbestos Hazard Emergency Response Act (AHERA) Plan required for schools to have. Mr. Levetzow told Mr. Benze that work in the building must stop until the investigation was completed. The field office personnel also told Mr. Reeves that no other removal work could be completed until it was determined if there was asbestos present. As the field office personnel were leaving the building they observed a debris pile sitting outside of the building. The debris included broken floor tile, drywall, plaster pieces, and spray on ceiling acoustical covering. The field office personnel collected several samples of the suspect material. The samples indicated the presence of regulated amounts of asbestos. A sample of the tile indicated the tile contained 16% Chrysotile asbestos and the mastic contained 5% Chrysotile asbestos. A sample of the ceiling texture indicated that it contained 12% asbestos (9% Chrysotile asbestos and 3% Amosite asbestos).

4. On May 22, 2013, Mr. Levetzow contacted Mr. Seng to discuss the complaint and the findings of the investigation. Mr. Levetzow explained the asbestos regulations to Mr. Seng and requested that Mr. Seng hire a licensed asbestos contractor to inspect the building. Mr. Seng stated he would do so.

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5. On May 28, 2013, Shawn Courtney with Advanced Environmental Testing and Abatement, Inc. (Advanced Environmental) conducted the asbestos inspection at the school building. Mr. Benze and two other men were at the building working. Samples taken by Advanced Environmental indicated the presence of regulated asbestos containing material at the school building. Advanced Environmental provided DNR Field Office 6 with a copy of the results. A sample of transite taken from the debris pile indicated that it contained 15% Chrysotile asbestos. A sample of surfacing taken from the debris pile indicated that the first layer contained 5% Chrysotile asbestos and the second layer contained 1% Chrysotile asbestos. Two samples of floor tile from an office area indicated the presence of Chrysotile asbestos. The first layer in one of the samples contained 10% Chrysotile asbestos and the second layers contained 3% Chrysotile asbestos. The first layer of the other sample contained 15% Chrysotile asbestos and the second layer contained 10% Chrysotile asbestos. The first layer of a sample of floor tile in the main hallway contained 10% Chrysotile asbestos and the second layer contained 3% Chrysotile asbestos. A sample of floor tile from one of the classrooms contained 5% Chrysotile asbestos.

6. On May 28, 2013, Mr. Levetzow sent Mr. Seng an email regarding the samples collected on the day of the investigation. Mr. Levetzow stated that the sample results indicated the presence of regulated asbestos. Mr. Levetzow informed Mr. Seng that a Notice of Violation letter would be issued and the violations may result in further enforcement.

7. On May 30, 2013, Mr. Levetzow spoke to Mr. Benze on the telephone. Mr. Levetzow asked if work had stopped in the building and Mr. Benze stated that work had continued in the building since the time of the inspection. Mr. Benze stated that the debris pile had been started in September or October 2012 and he confirmed that a licensed asbestos abatement contractor would be hired to abate and dispose of the material. Mr. Levetzow followed up with an email to Mr. Benze. Mr. Levetzow provided a copy of the notification form that would need to be submitted prior to abatement activities.

8. On May 30, 2013, DNR Field Office 6 issued a Notice of Violation letter to Mr. Seng for the asbestos violations discovered during the field office investigation. The letter required Mr. Seng to cease further renovation work until the building and debris had been inspected and to submit required notifications prior to the abatement of the debris pile and the building. The letter indicated that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

Mr. Seng neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

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1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

3. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the renovation of the building owned by Mr. Seng. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the renovation of the building owned by Mr. Seng. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Mr. Seng was not in compliance with these provisions when the renovation project occurred.

6. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During the field office's inspection dry asbestos containing materials, including floor tile and acoustical covering, was found in a debris pile outside of the building. The facts in this case indicate violations of this provision.

7. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During the field office's inspection dry asbestos containing materials, including floor tile and acoustical covering, was found in a debris pile outside of the building. The facts in this case indicate violations of this provision.

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8. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During the field office's inspection dry asbestos containing materials, including floor tile and acoustical covering, was found in a debris pile outside of the building. The above facts indicate violations of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Seng agrees to do the following:

1. Mr. Seng shall pay a penalty of \$3,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations allowed Mr. Seng to recognize an economic benefit in avoided and delayed asbestos procedures. Mr. Seng delayed the costs of an asbestos inspection and was able to avoid any time delay in the renovation by failing to submit the notification to the DNR. Mr. Seng also avoided the costs of properly removing the asbestos prior to the start of the renovation activities that disturbed the asbestos containing material. The economic benefit received by Mr. Seng is estimated to be at least \$500.00 and that amount is assessed for this factor.

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Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the renovation. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Mr. Seng has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

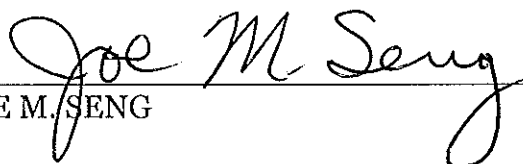
This administrative consent order is entered into knowingly and with the consent of Joe M. Seng. For that reason, Joe M. Seng waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 10th day of
January, 2013


JOE M. SENG

Dated this 31st day of
December, 2013.

Kelli Book; Tom Wuehr; DNR Field Office 6; EPA; VII.C.4